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OUR UNEASINESS WITH POLICE UNIONS: POWER AND VOICE FOR THE POWERFUL?

MARCIA L. MCCORMICK*

I. INTRODUCTION

When Michael Brown was shot by Officer Darren Wilson in August of 2014 and people started to talk publicly to tell the story of what happened, to determine whether a crime had occurred, or to protest the shooting or living conditions of African Americans in Ferguson and cities like it, the two people in the best position to talk about what happened and why could not speak directly to the public. As a result, several prominent voices emerged. A number of witnesses, and the man who was with Michael Brown at the time he was shot spoke publicly about what they saw. A number of local activists and journalists tweeted and streamed video from the protests. Robert McCulloch, the St. Louis County Prosecutor was the voice of the state, and St. Louis County Police Chief Jon Belmar spoke frequently on behalf of law enforcement, primarily connected with the protests.¹

Absent were the voices of Michael Brown and Darren Wilson. It was obvious why Michael Brown could not speak, but maybe less obvious why Darren Wilson could not. Initially, the officer involved in the shooting was not identified. Later when he was identified, some were concerned that he or his family might be in danger, and that likely kept him from appearing publicly or speaking out. Even more likely there was simply no likely reason for Wilson to speak. As police officers know better than anyone, anything he said could become evidence in criminal proceedings, a civil action for damages, or simply in the court of public opinion. Moreover, anything he said could be used to determine his fitness to remain employed, to get a job anywhere else, and to keep any pension or other benefits he might be entitled to. Wilson had nothing

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1. See, e.g., Matt Pearce, *Protests again Roil Ferguson, Mo. over Michael Brown Shooting*, L.A. TIMES (Aug. 13, 2014, 11:14 PM), <http://www.latimes.com/nation/la-na-ferguson-police-shooting-08132014-story.html>.

to lose by keeping quiet except for the frustration that might come from not being able to publicly defend oneself from awful things others might say.²

Wilson was not undefended, however. Often speaking in his defense, or at least speaking about the use of force generally from the police perspective, was Jeff Roorda, Executive Director of the St. Louis Police Officers Association.³ Roorda was extremely vocal, taking many opportunities to publicly support Wilson and other officers, focusing on the difficult and dangerous job police have in the face of hostility and sometimes lawless behavior. Roorda was quoted or mentioned in hundreds of stories, national and international, about the shooting, police use of force generally, the police response to protesters, the situation in Ferguson, and civilian oversight of police.⁴ He appeared on a number of national news programs, like *The Lead with Jake Tapper* on CNN,⁵ *Anderson Cooper 360* on CNN,⁶ *Erin Burnett Outfront* on CNN,⁷ *The Situation Room* on CNN,⁸ *CNN Tonight*,⁹ and a variety of other shows on CNN,¹⁰ All

2. See generally Jake Halpern, *The Cop*, NEW YORKER (Aug. 10, 2015), <http://www.newyorker.com/magazine/2015/08/10/the-cop>.

3. ST. LOUIS POLICE OFFICERS' ASS'N, FRATERNAL ORDER OF POLICE – LODGE 68, http://www.slpoa.org/?zone=/unionactive/view_article.cfm&HomeID=152110&page=SLPOA (last updated Feb. 10, 2010). The St. Louis Police officer's association is the division of the Fraternal Order of Police that represents officers in St. Louis. *Id.* The lodge that represented Wilson and other officers in the county was the Eastern Missouri Coalition of Police – Lodge 15. See also MISSOURI FRATERNAL ORDER OF POLICE, <http://www.mofop.org/lodges/>. The Fraternal Order of Police is the union that represents police officers in Missouri. See also *E. Mo. Coal. of Police, Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755, 758 (Mo. 2012) (en banc).

4. Search of WestlawNext News Database, WESTLAW, next.westlaw.com (follow “News” hyperlink; then use the quoted search parameters: “adv: (jeff /2 roorda) % (technology one or “technology one”)”) (returning more than 350 news stories after the shooting).

5. *The Lead with Jake Tapper* (CNN television broadcast Aug. 19, 2014; Nov. 21, 2014; Nov. 25, 2014; Dec. 1, 2014; Dec. 2, 2014; Mar. 12, 2015; Mar. 16, 2015; Apr. 17, 2015; Aug. 4, 2015).

6. *Anderson Cooper 360* (CNN television broadcast Nov. 25, 2014; Nov. 27, 2014; Aug. 11, 2014; Sept. 2, 2015).

7. *Erin Burnett OutFront* (CNN television broadcast Nov. 15, 2014; Nov. 20, 2014; Nov. 21, 2014; Nov. 25, 2014; Dec. 4, 2014; Mar. 5, 2015; Mar. 12, 2015; Mar. 16, 2015).

8. *The Situation Room* (CNN television broadcast Nov. 21, 2014; Nov. 24, 2014; Nov. 25, 2014; Dec. 1, 2014; Jan. 29, 2015; May 7, 2015).

9. *CNN Tonight* (CNN television broadcast Mar. 4, 2015; Mar. 12, 2015; Mar. 13, 2015; Mar. 17, 2015; Mar. 20, 2015; Apr. 3, 2015; May 19, 2015; Aug. 4, 2015; Aug. 11, 2015).

10. See *Newsroom* (CNN television broadcast Nov. 14, 2014; Nov. 17, 2014; Nov. 25, 2014; Dec. 1, 2014; Mar. 4, 2015; Mar. 7, 2015; Mar. 13, 2015; Mar. 15, 2015; Mar. 16, 2015; May 5, 2015; Aug. 4, 2015; Aug. 10, 2015); *Special Live Event* (CNN television broadcast Nov. 24, 2014); *New Day* (CNN television broadcast Nov. 25, 2014; Dec. 3, 2014; Mar. 12, 2015; Mar. 13, 2015; Aug. 4, 2015; Aug. 11, 2015); *CNN @ThisHour* (CNN television broadcast Dec. 1, 2014; Aug. 10, 2015); *CNN Legal View* (television broadcast Dec. 1, 2014; Aug. 4, 2015); *Smerconish*

Things Considered on NPR,¹¹ The Today Show on NBC,¹² Hannity on FOX,¹³ the O'Reilly Factor on FOX,¹⁴ On the Record on FOX,¹⁵ and the Kelly File on FOX.¹⁶ He was also the subject of stories on national news programs, like All In with Chris Hayes on MSNBC¹⁷ and the Situation Room on CNN.¹⁸ Roorda became so outspoken and such a flashpoint for conflict, that the union eventually replaced him as a spokesman on issues related to civilian review of allegations of police misconduct in St. Louis.¹⁹

While Roorda was especially visible and rather controversial, police union leaders all over the country often play a role in publicly defending officers accused of excessive force or other misconduct. That was true in the death of Freddy Gray in Baltimore,²⁰ in the death of Eric Garner in New York,²¹ in the

(CNN television broadcast Nov. 22, 2014); *CNN Reliable Sources* (CNN television broadcast Mar. 15, 2015).

11. *All Things Considered* (NPR radio broadcast Aug. 28, 2014; Sept. 25, 2014); *see also Weekend Edition* (NPR radio broadcast Aug. 8, 2015).

12. *The Today Show* (NBC television broadcast Dec. 2, 2014).

13. *Hannity* (Fox News television broadcast Nov. 26, 2014), <http://insider.foxnews.com/2014/11/25/watch-hannity-takes-brown-family-attorney-daryl-parks>.

14. *The O'Reilly Factor* (Fox News television broadcast Mar. 6, 2015).

15. *On the Record* (Fox News television broadcast Mar. 12, 2015; Mar. 13, 2015).

16. *The Kelly File* (Fox News television transcript Mar. 13, 2015).

17. *All In with Chris Hayes* (MSNBC News television broadcast Sept. 17, 2014; Dec. 2, 2014; Dec. 3, 2014; Dec. 4, 2014).

18. *The Situation Room* (CNN television broadcast Jan. 29, 2015); *New Day* (CNN television broadcast Jan. 29, 2015); *Early Start* (CNN television broadcast Jan. 29, 2015); *Newsroom* (CNN television broadcast Jan. 29, 2015).

19. Christine Byers, *Controversial St. Louis Police Union Leader Muzzled when it Comes to Civilian Review*, ST. LOUIS POST DISPATCH (Feb. 16, 2015), http://www.stltoday.com/news/local/crime-and-courts/controversial-st-louis-police-union-leader-muzzled-when-it-comes/article_7fd6dbc2-e878-59a4-bd9a-cd056f9c1476.html; *Newsroom* (CNN television broadcast Mar. 15, 2015).

20. E.g., John Bacon, *Freddie Gray Settlement "Obscene," Police Union Chief Says*, USA TODAY (Sept. 9, 2015, 2:18 PM), <http://www.usatoday.com/story/news/nation/2015/09/09/baltimore-panel-approves-freddie-gray-settlement/71928226/>; Colin Campbell & Justin George, *Baltimore Police Union President Likens Protests to "Lynch Mob,"* BALT. SUN (Apr. 22, 2015, 10:33 PM), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-fop-news-conference-20150422-story.html>; Justin Fenton & Kevin Rector, *Police Union Blasts Commanders in "After Action Review" of Riot*, BALT. SUN (July 8, 2015, 9:26 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-fop-report-20150708-story.html>.

21. E.g., *NYPD Chokehold Victim Eric Garner Complicit in Own Death, Union Says*, CBSNEWS (Dec. 5, 2014, 7:21 PM), <http://www.cbsnews.com/news/nypd-chokehold-victim-eric-garner-complicit-in-own-death-union-says/>; Joe Tacopino, Shawn Cohen & Yoav Gonen, *Union Head Blasts City's \$ 5.9M Settlement in Eric Garner Case*, N.Y. POST (July 13, 2015, 7:48 PM), <http://nypost.com/2015/07/13/city-reaches-5-9m-settlement-in-garner-chokehold-case/>.

death of Ezell Ford in Los Angeles,²² and in the death of Tamir Rice in Cleveland.²³ It was also true, although to a lesser extent, in the death of Walter Scott in Charleston, South Carolina, in which the officer was filmed shooting an unarmed man who was running away and appeared to then place a Taser next to his body.²⁴ There the union called the shooting “beyond comprehension” but defended police generally and warned the public “not [to] allow the professional race agitators to seize this moment to advance their often self-serving opinions of what is wrong in South Carolina.”²⁵

A majority of the press coverage of these high profile shootings has focused on the most visible issues connected with the use of force by police. All of the victims who died were Black, and many of the officers were not. Thus, much of the outrage and protests about the shootings have focused on concerns about race and implicit or explicit bias by police officers.²⁶ The “Black Lives Matter” movement was born of the sense that the shooting of young Black men by police officers or civilian vigilantes was an epidemic.²⁷ The use of force in these cases and others caught on film in the last few years also highlighted training issues for police – in each of these situations, the officer involved seemed to engage in a pattern of escalation of force and seemed to interpret anything less than complete cooperation and servility as aggression and resistance that had to be overcome.²⁸ The police reaction to the protests with tanks, tear gas, and rubber bullets made Ferguson look like a war zone, highlighting the effects of militarization of local police funded by the Department of Homeland Security in its zeal to fight terrorist threats, or

22. Kate Mather, *LAPD Union Blasts Police Commissioners over Ezell Ford Decision*, L.A. TIMES (June 16, 2015, 4:46 PM), <http://www.latimes.com/local/lanow/la-me-ln-police-commission-ezell-ford-20150616-story.html>.

23. *Tamir Rice Case Still Divides Cleveland after Reports*, CBS NEWS (Oct. 11, 2015, 4:47 PM), <http://www.cbsnews.com/news/tamir-rice-case-still-divides-cleveland-after-reports/>.

24. See Al Baker, *Police Unions, Facing Public Anger, Rethink How to Address Shootings*, N.Y. TIMES (Apr. 18, 2015), <http://www.nytimes.com/2015/04/19/us/police-unions-facing-public-anger-rethink-how-to-address-shootings.html>.

25. Tri-County Lodge #3 Fraternal Order of Police, *Open Letter from Fraternal Order President John C. Blackman*, FACEBOOK (Apr. 9, 2015), <https://www.facebook.com/SCFOP3/photos/a.570283016319701.148533.120522961295711/1040255622655769/?type=3&theater>.

26. See, e.g., Lauren McCauley, *With Nationwide Protests Against Police Brutality, Activists Declare: “Black Spring” Has Begun*, COMMONDREAMS (May 2, 2015), <http://www.commondreams.org/news/2015/05/02/nationwide-protests-against-police-brutality-activists-declare-black-spring-has>.

27. See Alicia Garza, *A HerStory of the #BlackLivesMatter Movement*, BLACKLIVESMATTER (Oct. 7, 2014), <http://www.thefeministwire.com/2014/10/blacklivesmatter-2/>.

28. See Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, THE ATLANTIC (Dec. 12, 2014), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>.

donated as a result of the drawdown in the wars in Iraq and Afghanistan.²⁹ Finally, in the broader context, the structure of St. Louis's strange proliferation of municipalities and the way those municipalities seemed to be using low level offenses and their police forces to harass Black and poor people was examined to explain the large scale hostility and suspicion towards police.³⁰

Despite the visibility of Roorda and other police union leaders, the role of police unions in these high profile use of force cases has been the subject of very little media attention. The *New York Times*, for example, reported on the changing receptivity of the public to instinctive union responses to defend the officers at issue at all costs.³¹ A column by Russ Douthat challenged the propriety of allowing police unions and called for reform.³² The *Atlantic* focused on how job security provisions in collective bargaining agreements protect cops accused of unlawful force.³³ Additionally, an article in *The Nation* focused on the challenges posed by the division between police unions and other parts of the labor movement.³⁴ Outside of those examples, the media covered comments by union leaders, but did not really focus on the effects of those comments and other union efforts or on the unions as actors themselves.³⁵

29. See Julie Bosman & Matt Apuzzo, *In Wake of Clashes, Calls to Demilitarize Police*, N.Y. TIMES (Aug. 14, 2014), <http://www.nytimes.com/2014/08/15/us/ferguson-missouri-in-wake-of-clashes-calls-to-demilitarize-police.html>; David Love, *The Dangerous Militarization of Our Police*, CNN (May 14, 2015, 3:39 PM), <http://www.cnn.com/2015/05/13/opinions/love-move-bombing-anniversary/>; see generally RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* (2013).

30. E.g., Stephen Deere, *Ferguson Commission Tackles Municipal Courts*, ST. LOUIS POST DISPATCH (Dec. 15, 2014), http://www.stltoday.com/news/local/crime-and-courts/ferguson-commission-tackles-municipal-courts/article_34b7fb34-1eec-5703-bf6d-5ee56c45c22a.html.

31. See Baker, *supra* note 24; Noam Scheiber, *Police Struggle with Loss of Privileged Position*, N.Y. TIMES (May 6, 2015), <http://www.nytimes.com/2015/05/06/us/police-struggle-with-loss-of-privileged-position.html>.

32. Ross Douthat, Opinion., *Our Police Union Problem*, N.Y. TIMES (May 2, 2015), <http://www.nytimes.com/2015/05/03/opinion/sunday/ross-douthat-our-police-union-problem.html>. The *New Republic* countered that the law governing use of force by officers and their relationships with prosecutors drove the inability to remove abusive officers. Brian Beutler, *Police Unions Aren't the Problem*, THE NEW REPUBLIC (May 7, 2015), <http://www.newrepublic.com/article/121736/police-unions-arent-problem-local-prosecutors-are>.

33. Conor Friedersdorf, *How Police Unions and Arbitrators Keep Abusive Cop on the Street*, THE ATLANTIC (Dec. 2, 2014), <http://www.theatlantic.com/politics/archive/2014/12/how-police-unions-keep-abusive-cops-on-the-street/383258/>.

34. Michelle Chen, *Police Unions Don't Serve the People. Can the Labor Movement Force Them To?*, THE NATION (Jan. 9, 2015), <https://www.thenation.com/article/police-unions-dont-serve-people-can-labor-movement-force-them/>.

35. See, e.g., Cory Shaffer, *Cleveland Police Union Reacts to Discipline of Officers Involved in 2012 Case*, CLEVELAND.COM (Jan. 26, 2016, 2:27 PM) (last updated on Feb. 1, 2016, 12:42 PM), http://www.cleveland.com/metro/index.ssf/2016/01/cleveland_police_union_to_react_to_discipline_of_officers_involved_in_2012_chase_live_coverage.html; Nina Mandell, *NYC*

Academic focus has been similar to that of the media. While there has been significant study of the use of force by police officers, there has been virtually no study of police unions.³⁶ Similarly, while there has been significant study of public sector unions³⁷, there has been little focus on police unions in particular. In this article, I hope to focus on some of the biggest issues related to police unions in these kinds of cases. I will outline briefly some of the objections to police unions generally and more specific objections to police unions in the context of police reform. I will also highlight some opportunities for police unions and for the public to promote reforms and better policing.

II. POLICE UNIONS

Public sector unions are a relatively recent development. The Wagner Act³⁸ excluded public sector employees, and it was not until the 1960's that Congress and the states began enacting statutes allowing for collective bargaining in the public sector.³⁹ Despite the shorter history of legal protection, public sector unions appear to be thriving compared to unions in the private sector. In 2014, 35.7 percent of public sector workers were in a union, whereas only 6.6 percent of workers in the private sector were union members.⁴⁰ Moreover, nearly half of local government employees were represented by a union.⁴¹

Police officers occupy a unique social position. They are literally the arm of the executive branch and privileged to use force to keep the peace.⁴² As a result of that power, police conduct must be controlled to ensure it remains

Police Union Chief Calls Media Coverage of James Blake Incident 'Unjust and Un-American,' USA TODAY (Sept. 16, 2015, 11:39 PM), <http://ftw.usatoday.com/2015/09/nyc-police-union-chief-calls-media-coverage-of-james-blake-incident-unjust-and-un-american>; Nicole Norfleet, *Police Union Official Critical of 'Disgusting Chant' at Black Lives Matter March*, STAR TRIBUNE (Aug. 31, 2015, 11:20 PM), <http://www.startribune.com/police-union-official-critical-of-disgusting-chant-at-black-lives-matter-march/323465911/>.

36. Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRACTICE & RES. 95, 107 (2008).

37. See, e.g., *Collective Bargaining in the Public Sector*, 97 HARV. L. REV. 1676 (1984); Joseph Slater, *The Strangely Unsettled State of Public-Sector Labor in the Past Thirty Years*, 30 HOFSTRA LAB. & EMP. L.J. 511 (2013).

38. National Labor Relations Act, 29 U.S.C. §§ 151–169 (1935).

39. *Collective Bargaining in the Public Sector*, *supra* note 37, at 1676–77; Slater, *supra* note 37, at 516–19.

40. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NEWS RELEASE USDL-15-0072, UNION MEMBERS – 2014 (2015).

41. *Id.* at tbl.3 (stating that local government workers include police officers and showing that 45.5 percent of local government employees are represented by unions).

42. HOWARD S. COHEN & MICHAEL FELDBERG, POWER AND RESTRAINT: THE MORAL DIMENSION OF POLICE WORK 56 (1991).

within constitutional limitations.⁴³ At the same time, however, because no one including government officials is above the law, the police must be at least somewhat independent of political influence.⁴⁴ This tension between constraint and freedom can be difficult to manage, and workplace protections for police officers illustrate that tension.⁴⁵ In some ways police officers need more protection than other kinds of public employees, and in other ways, they should have less protection.

One reason that police might need more ability to negotiate about working conditions, pay, and job security is that being a police officer can be a dangerous job. Police officers are more likely to be killed at work than people in other professions.⁴⁶ Even though the number of fatalities in 2014, 103, may not sound high,⁴⁷ the rate of illness and nonfatal injury is higher than for other workers.⁴⁸ Another reason that police officers might need more protection than other workers is to guard against public corruption. If an officer can be forced to act or refrain from acting because of concerns about retaliation by superiors, politicians, or politically connected economic interests, then law enforcement cannot work.⁴⁹ Similarly, if an officer can be too easily disciplined, those disciplinary processes might be strategically invoked by people to frustrate enforcement as part of a defense or even organized crime strategy.

Police can bargain collectively in the vast majority of states;⁵⁰ the subjects they can bargain over vary however,⁵¹ and only two states allow police officers to strike.⁵² Even where collective bargaining is illegal, employee associations, likely either the Fraternal Order of Police or the National Association of Police

43. *Id.*

44. Philip Stenning, *The Idea of the Political 'Independence' of the Police: International Interpretations and Experiences*, in *POLICE AND GOVERNMENT RELATIONS: WHO IS CALLING THE SHOTS?* 183, 188 (Margaret E. Beare & Tonita Murray eds., 2007).

45. See generally JOHN KLEINIG, *THE ETHICS OF POLICING* 67–70 (1996).

46. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *OCCUPATIONAL OUTLOOK HANDBOOK, POLICE AND DETECTIVES: WORK ENVIRONMENT* (2014), <http://www.bls.gov/ooh/protective-service/police-and-detectives.htm#tab-3> (last visited Mar. 29, 2016).

47. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *NEWS RELEASE USDL-15-1789, NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES IN 2014 (PRELIMINARY RESULTS)* (2015).

48. SHANNON M. MALONEY, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *NONFATAL INJURIES AND ILLNESSES AMONG STATE AND LOCAL GOVERNMENT WORKERS* 9 (2014) (reporting 11.3 cases per 100 police workers).

49. See Stenning, *supra* note 44, at 188–89.

50. MILLA SANES & JOHN SCHMITT, *CTR. FOR ECON. & POL'Y RESEARCH, REGULATION OF PUBLIC SECTOR COLLECTIVE BARGAINING IN THE STATES* 5 (2014) (reporting that bargaining by police is illegal in only five states – Georgia, North Carolina, South Carolina, Tennessee, and Virginia – and only another four have no statute or case law on the legality of police unions – Alabama, Colorado, Mississippi, and Wyoming).

51. SANES & SCHMITT, *supra* note 50, at 7.

52. SANES & SCHMITT, *supra* note 50, at 9.

Organizations,⁵³ attempt to represent interests of employees, for example providing legal or advocacy support or access to disability or other insurance policies.⁵⁴ Police unions are also politically powerful, often, with political action committees that are sometimes the largest contributors to candidates for office.⁵⁵

Police can collectively bargain in Missouri, but police unions are in an odd position in the state. The Missouri Constitution provides a right to organize and bargain collectively for public sector workers, recognized in 2007,⁵⁶ but the public sector labor law does not cover police officers.⁵⁷ Thus, departments are required to bargain in Missouri, but the subjects of bargaining and processes for doing so are not clearly defined.⁵⁸

III. PERILS

Public policy surrounding public sector unions is somewhat conflicted.⁵⁹ Collective bargaining in the public sector is looked at less like an economic process and more as a political process.⁶⁰ Government offices are not primarily viewed as economic actors, but instead as instruments of public policy and providers of essential services that cannot effectively be provided in the private sector, which must be accountable to the public through the political process.⁶¹ Concerns over public employee strikes, undue influence over government policy by unions, and the economic effects of organized public employees made public employee unions controversial, historically.⁶² Unions protect

53. 2 THE ENCYCLOPEDIA OF POLICE SCI. 1314 (Jack R. Greene eds., 3d ed. 2007).

54. See SANES & SCHMITT, *supra* note 50, at 12–68 (including a table with state-by-state information on police union bargaining).

55. ENCYCLOPEDIA OF POLICE SCI., *supra* note 53, at 1314.

56. Independence-Nat'l Educ. Ass'n v. Independence Sch. Dist., 223 S.W.3d 131, 136–39 (Mo. 2007) (en banc).

57. MO. REV. STAT. § 105.510 (2000).

58. See *id.*

59. See Slater, *supra* note 37, at 512–13 (describing instability in public sector labor law from 1980 to 2010: “Because there is so much variation in the public sector, there is no single story of the past thirty years to tell”).

60. Martin H. Malin, *Does Public Employee Collective Bargaining Distort Democracy? A Perspective from the United States*, 34 COMP. LAB. L. & POL'Y J. 277, 279–80 (2013) (citing HARRY H. WELLINGTON & RALPH K. WINTER, JR., THE UNIONS AND THE CITIES 29–30 (1974); Clyde W. Summers, *Public Employee Bargaining: A Political Perspective*, 83 YALE L.J. 1156, 1164 (1974)).

61. See generally *Beyond Distrust: How Americans View Their Government*, PEW RESEARCH CTR. (Nov. 23, 2015), <http://www.people-press.org/2015/11/23/beyond-distrust-how-americans-view-their-government/>.

62. See *Collective Bargaining in the Public Sector*, *supra* note 37, at 1676–77; Martin H. Malin, *The Paradox of Public Sector Labor Law*, IND. L.J. 1369, 1369–70 (2009) [hereinafter *The Paradox of Public Sector Labor Law*]; Daniel M. Rosenthal, *Public Sector Collective Bargaining, Majoritarianism, and Reform*, 91 ORE. L. REV. 673, 681–93 (2013).

public worker salaries and benefits when the public might be able to pay less for those things,⁶³ and requiring public employers to bargain over those matters and others gives public employees access to decision makers that no other interest group has.⁶⁴ Even some supporters of public sector bargaining accept this view that public sector bargaining may subvert the public interest and be antidemocratic, but justify any danger of antidemocratic effect by the fact that without it, pressure from the public will always prevail to keep wages and benefits for public employees at exploitative levels.⁶⁵

In addition to critiques that public sector unions interfere with democracy, allowing collective bargaining in the public sector is also often portrayed as an obstacle to effective government.⁶⁶ To the extent that public sector unions bargain for job security for members, seniority, wage scales, and staffing levels, they are viewed as interfering with the kind of management prerogatives that can reward the most innovative, creative, and productive employees and penalize the lazy or incompetent.⁶⁷ In addition, the obligation of management to bargain over the effects of changes to work policies are viewed as limitations on the ability of government to adapt efficiently to changing conditions.⁶⁸

To some extent, police unions have symbolized the worst dangers of public sector unionization. At the beginning of the twentieth century, public employees were beginning to join unions and seek to collectively bargain. Union density was rising. But then the Boston Police strike of 1919 singlehandedly ended the nascent growth of the public sector labor movement and became the singular doomsday scenario of what could happen if public sector workers were allowed to organize; its effects even influenced President Reagan's handling of the illegal strike by the Professional Air Traffic Controllers Union in 1981.⁶⁹ In one evening, 1100 officers walked away from their posts, and a night of rioting, violence, and looting followed by National

63. Daniel DiSalvo, *The Trouble with Public Sector Unions*, 5 NAT'L AFF. 3, 5, 7 (2010). The claim that public employees are "overpaid" compared to those in the private sector was a common claim used by pundits and politicians attempting to stir up resentment of public sector unions. See Slater, *supra* note 37, at 537–38.

64. The Paradox of Public Sector Labor Law, *supra* note 62, at 1372.

65. See Summers, *supra* note 60, at 1159–61.

66. See The Paradox of Public Sector Labor Law, *supra* note 62, at 1375–82, 1384.

67. The Paradox of Public Sector Labor Law, *supra* note 62, at 1380.

68. The Paradox of Public Sector Labor Law, *supra* note 62, at 1377 (referring to TSA travel safety protocols as an example).

69. Slater, *supra* note 37, at 515–16; see also Bryan J. Soukup, *From Coolidge to Christie: Historical Antecedents of Current Government Officials Dealing with Public Sector Labor Unions*, 64 LAB. L.J. 177, 180–81 (2013).

Guard efforts to restore order caused significant damage, many injuries, and five deaths.⁷⁰ The idea of police officers striking is still a terrifying prospect.

Police unions, more than other kinds of public sector unions,⁷¹ are often viewed as obstacles to reform, and there is a certain sense of adversary-ness between the officers on the street and high level officials and between the public and police.⁷² Police unions play a role in reinforcing the norms of the police subculture, which may include a sense of embattled warrior⁷³ and a unity that prohibits testifying against officers accused of misconduct.⁷⁴ This code of silence includes efforts to prevent investigations and to provide organized public group solidarity supporting officers accused of misconduct.⁷⁵ Police unions have quite strongly opposed efforts at citizen oversight.⁷⁶ Unions also fight to keep all information related to discipline of officers secret.⁷⁷ In fact, Jeff Roorda, who was a state representative in addition to his union role, introduced a bill in early 2014 to change the state's open meetings and records law to keep secret any information about internal investigations of police officers or any information about police shootings including the name of the officer involved unless the officer has been charged with a crime in connection with the internal investigation or shooting.⁷⁸

The fact that police unions seem especially powerful as a political group may make them also look more like obstacles to reform. To some extent, police unions have escaped the legislative crackdowns on other public sector unions. They were exempted from right to work laws in Michigan⁷⁹ and from prohibitions on agency shops, fair share agreements, or voluntary dues check-off in Wisconsin.⁸⁰ Many other of the new laws focused primarily on

70. JOSEPH E. SLATER, *PUBLIC WORKERS: GOVERNMENT EMPLOYEE UNIONS, THE LAW, AND THE STATE 1900-1962*, at 26–27 (2004).

71. See Douthat, *supra* note 32 (stating that teachers unions may actually be viewed as obstacles to educational reform, but the danger posed by bad teachers seems more diffuse than the danger posed by bad officers).

72. Douthat, *supra* note 32.; BRIAN A. JACKSON, *RAND CORPORATION, RESPECT AND LEGITIMACY – A TWO-WAY STREET: STRENGTHENING TRUST BETWEEN POLICE AND THE PUBLIC IN AN ERA OF INCREASING TRANSPARENCY 1* (2015).

73. Walker, *supra* note 36, at 103–04; Seth Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225, 225 (2015).

74. Walker, *supra* note 36, at 102, 104.

75. Walker, *supra* note 36, at 102.

76. Walker, *supra* note 36, at 102–03.

77. Walker, *supra* note 36, at 106.

78. H.R. 1466, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014); *Representative Jeff Roorda*, MISSOURI HOUSE OF REPRESENTATIVES, <http://www.house.mo.gov/member.aspx?district=113&year=2014> (last visited Mar. 29, 2016); Jeff Roorda, *Unquantifiable*, 45 GENDARME 5, 5 (2015).

79. 2012 Mich. Pub. Acts 349 §§ 14(4)(a)(i), (ii).

80. 2011 Wis. Sess. Laws §§ 219, 227, 276, 298. They were also exempted from many bargaining prohibitions. See *id.* § 314. However, the state's biannual budget prohibited bargaining

teachers.⁸¹ The fact that police unions have escaped this crackdown on public sector unions generally may make it look as if politicians have an interest in avoiding reforms that unions successfully resist.

Police unions also have a somewhat checkered history on matters related to race and sex equality, both externally, in the relationship between the police and the public, and internally, with respect to employment of diverse officers. The modern police union movement is grounded in resistance to civil rights; it began or at least focused its efforts in response to the civil rights movement and criticism of the police in the 1960's.⁸² Police unions are also situated on a race and class fault-line in the broader labor movement.⁸³ One of the reasons that police unions were thought to be inappropriate was that allowing police to organize would divide their loyalty between their commanders and the union,⁸⁴ and loyalty to the union could make them side with labor when called to break up strikes.⁸⁵ At the same time, police historically were used to enforce race-based laws and to target Black people who asserted their rights.⁸⁶ The indifference of the criminal justice system, including the police response,

over health insurance by law enforcement. 2011 Wis. Sess. Laws § 2409cy. In litigation over Wisconsin Act 10, the state suggested that the reason public safety officers were given rights other public sector unions were denied was because the public safety officers might strike. Slater, *supra* note 37, at 534.

81. See Martin H. Malin, *Sifting through the Wreckage of the Tsunami that Hit Public Sector Collective Bargaining*, 16 EMP. RTS. & EMP. POL'Y J. 533, 539-43 (2012) (discussing laws in Tennessee, Idaho, Illinois, Indiana, Michigan, and Ohio).

82. Walker, *supra* note 36, at 105; see also Liyah Kaprice Brown, *Officer or Overseer?: Why Police Desegregation Fails as an Adequate Solution to Racist, Oppressive, and Violent Policing in Black Communities*, 29 N.Y.U. REV. L. & SOC. CHANGE 757, 759, 794 (2005) (arguing that perceptions of Black communities about police are a result of police practices rather than simply a lack of Black police officers).

83. See generally Charlotte Garden & Nancy Leong, "So Closely Intertwined": Labor and Racial Solidarity, 81 GEO. WASH. L. REV. 1135, 1138-39, 1177 (2013) (explaining that organized labor has a history of racial exclusion, but that exclusion has not been universal, and organized labor also a history of collaboration with civil rights groups and has benefitted workers of color as well).

84. Joseph Slater, *Homeland Security vs. Workers' Rights? What the Federal Government Should Learn from History and Experience, and Why*, 6 U. PA. J. BUS. L. 295, 330 (2013).

85. Joseph Slater, *Public Workers: Labor and the Boston Police Strike of 1919*, 38 LAB. HIST. 7, 12 (1997).

86. See James B. Comey, Director, Fed. Bureau of Investigation, *Hard Truths: Law Enforcement and Race*, Address at Georgetown University (Feb. 12, 2015), <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race> (describing law enforcement's role in enforcing the status quo of racial insubordination as the "cultural inheritance" of modern officers).

towards women involved in sexual and intimate partner violence, and the high incidence of domestic violence by officers is also well documented.⁸⁷

Internally, the history is checkered as well. Just like for many other professions, police forces, where there were any Black officers, were segregated well into the twentieth century, and women of all colors were excluded.⁸⁸ Moreover, while research has shown little significant difference in the way that officers of different racial groups or different sexes behave on the street, women seem to be significantly less likely to be involved in serious misconduct, repeated misconduct, or the subject of citizen complaints.⁸⁹ Finally, police unions seem, at times, to magnify racial tensions. White-dominated police unions have brought many reverse discrimination suits, challenging affirmative action hiring plans, or simply challenging hiring that results in more minorities being hired.⁹⁰ Furthermore, rhetoric surrounding communities of color, labelling young Black men as “thugs,” accusing peaceful protesters or Black Lives Matter activists as wanting police to be killed,⁹¹ only heighten the salience of race. African-American officers have their own professional associations even though technically they are also represented by the same union as white officers, and those professional organizations sometimes speak out against positions taken by white-dominated police unions.⁹²

In short, although police work can be dangerous and officers need to be protected from improper influence so that they can do their jobs, that protection comes with some costs. Those costs may seem especially high when persistent social gaps are evident in a community. The structure of the job and the legal limits on bargaining further exacerbate this. Police interactions are often by nature high conflict,⁹³ and that conflict can lead to violence. Police policies are set at the top, not usually through collaboration with the rank and

87. See SUSAN ESTRICH, *REAL RAPE* 15–16 (1987); SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE* 157–61 (1982); see generally SUSANNA HOPE & ALEX ROSLIN, *POLICE WIFE: THE SECRET EPIDEMIC OF POLICE DOMESTIC VIOLENCE* (2015).

88. See generally, W. Marvin Dulaney, *Black Police in America*, in *BLACKS IN THE DIASPORA* (Indiana Univ. Press ed., 1996); DOROTHY MOSES SCHULZ, *FROM SOCIAL WORKER TO CRIMEFIGHTER: WOMEN IN UNITED STATES MUNICIPAL POLICING* (PRAGER ed., 1995).

89. Walker, *supra* note 36, at 104.

90. Walker, *supra* note 36, at 106.

91. See Matt Pearce, “Dead Cops . . . That’s What They Want,” Says Police Union’s Jeff Roorda, *L.A. TIMES* (Mar. 12, 2014, 12:54 PM), <http://www.latimes.com/nation/la-na-ferguson-jeff-roorda-20150312-story.html>.

92. Walker, *supra* note 36, at 104.

93. See Joseph J. Hurrell, Jr. & William H. Kroes, Nat’l Inst. for Occupational Safety & Health, *Stress Awareness*, in *JOB STRESS AND THE POLICE OFFICER* 234, 238, 241–42 (1975) (arguing that the police subculture helps reduce the stress officers face); Ivan Y. Sun, *A Comparison of Police Field Training Officers’ and Nontraining Officers’ Conflict Resolution Styles: Controlling Versus Supportive Strategies*, 6 *POLICE Q.* 23, 24 (2003).

file.⁹⁴ For example, in the early twentieth century, police reform focused on professionalization imposed in an authoritarian, top-down manner, and little has changed.⁹⁵

Public sector bargaining law institutionalizes this preference by prohibiting bargaining over policies.⁹⁶ By prohibiting bargaining over public policy, public sector bargaining law allows unions not to take responsibility for implementing those policies.⁹⁷ It further limits unions to bargaining over things like wages and working conditions, creating an adversarial dynamic with management imposing policies that the unions do not agree with (because they were not allowed to help form them) and negotiating technical ways to protect public employees from those policies or at least negative effects of them, in a way that ultimately may undermine or frustrate the policies.⁹⁸ In other words, “the law has channeled public employee unions away from investing in the risks of the public enterprise and toward insulating their members from those risks. Unions have done such an effective job in their channeled role that their collective bargaining agreements can impede effective government.”⁹⁹ Especially relevant for police unions, they have generally been left out of discussions about accountability and citizen oversight despite recommendations that they be included to result in better policies and support.¹⁰⁰

IV. PROMISE

Although police unions are frequently criticized, the effects of police unions on innovation in policing, accountability of officers, or police-community relations have not been studied much.¹⁰¹ Discussions in the legal literature about the way that police culture contributes to misconduct or efforts to stymie reform mention unions mostly in passing, without considering them separate from law enforcement officials.¹⁰² To the extent that police unions

94. Todd Wuestewald & Brigitte Steinheider, *Shared Leadership: Can Empowerment Work in Police Organizations?*, 73 THE POLICE CHIEF (Jan. 2006), http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=789&issue_id=12006.

95. Walker, *supra* note 36, at 99.

96. See The Paradox of Public Sector Labor Law, *supra* note 62 at 1389–90.

97. The Paradox of Public Sector Labor Law, *supra* note 62, at 1389–90.

98. The Paradox of Public Sector Labor Law, *supra* note 62, at 1389–91; see also Walker, *supra* note 36, at 100 (describing how bargaining over assignments can interfere with effective policing).

99. The Paradox of Public Sector Labor Law, *supra* note 62, at 1391.

100. Walker, *supra* note 36, at 103.

101. Walker, *supra* note 36, at 96.

102. See e.g., Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 481, 512 n.364, 538, 539 n.541 (2004) (mentioning unions four times in a nearly 100-page law review article).

have power to shape the culture of a department, imagine how effective they could be if harnessed for reform.¹⁰³ Yet harnessing police unions has not been seriously entertained by reformers very often. In fact, a study of structural reform litigation instituted by the U.S. Department of Justice fails to even mention unions as having any role in instituting reform.¹⁰⁴ Reformers and researchers may generally be silent about police unions because unions themselves do not seem to be seeking a cooperative place at the table. In short, there is little evidence to suggest that police unions actually have been involved in efforts at reform, either as an effort of the union or reformers. There have been calls, though, to increase police union participation in federal police reform efforts,¹⁰⁵ and in other efforts at democratic policing.¹⁰⁶ And at least occasionally, unions have supported reform efforts.¹⁰⁷

The biggest example is the recent effort to reform policing in Cincinnati. In that city, on April 7, 2001, a white police officer shot an unarmed black man.¹⁰⁸ Protests and riots lasted for several days.¹⁰⁹ The Mayor of Cincinnati requested that the Department of Justice review the police department's uses of force, and after the investigation, entered into an agreement.¹¹⁰ The parties involved in reaching the agreement were not just the DOJ and the city, however; the police union was also involved in the negotiated settlement that

103. See generally POLICE REFORM FROM THE BOTTOM UP: OFFICERS AND THEIR UNIONS AS AGENTS OF CHANGE (Monique Marks & David Sklansky eds. 2012).

104. Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1376–77 (2015) (stating that courts have refused union requests to intervene in structural reform litigation and regularly allow negotiations exclusively between the departments and the DOJ).

105. Elliot Harvey Schatmeier, *Reforming Police Use-of-Force Practices: A Case Study of the Cincinnati Police Department*, 46 COLUM. J. L. & SOC. PROBS. 539, 581–82 (2013) (attributing success of Cincinnati reforms in part to inclusion of police union as stakeholder); Kami Chavis Simmons, 98 J. CRIM. L. & CRIMINOLOGY 489, 520–25, 526–41, 545–46 (2008) (describing federal hostility to at least one union effort to be involved in the consent decree process and calling for greater union involvement as a way to protect legitimate interests and ensure union support of reforms).

106. Monique Marks & Jenny Fleming, *The Right to Unionize, the Right to Bargain, and the Right to Democratic Policing*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 178, 178 (2006).

107. Steve Wilson & Kevin Buckler, *The Debate over Police Reform: Examining Minority Support for Citizen Oversight and Resistance by Police Unions*, 35 AM. J. CRIM. JUST. 184, 188 (2010) (quoting a letter from the Police Officer's Association of Columbia, Missouri, in favor of citizen review).

108. *All Things Considered: Race Relations in Cincinnati* (NPR radio broadcast Nov. 1, 2001), <http://www.npr.org/programs/atc/features/2001/nov/cincinnati/011101.cincinnati.html>.

109. *Id.*; Alana Semuels, *How to Fix a Broken Police Department*, THE ATLANTIC (May 28, 2015), <http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/>.

110. *Department of Justice Agreement, Background*, CITY OF CINCINNATI, <http://www.cincinnati-oh.gov/police/departments-references/departments-of-justice-agreement/> (last visited Mar. 29, 2016).

resulted.¹¹¹ Police unions often object when a city negotiates with the DOJ at least partially because they believe that consent decrees will "complicate patrol work, increase paperwork, increase oversight, reduce officer discretion and autonomy, and increase punishment for practices that the union considers 'good police work.'"¹¹² According to one researcher, the involvement of the union in this agreement helped that agreement lead to dramatic improvement with less use of force, use of less serious forms of force, and a drop in citizen complaints.¹¹³ Reforms were not quick, the union was not always seen as truly supporting the reforms, and Cincinnati is not perfect.¹¹⁴ Still, there is significant commitment to collaboration that remains.¹¹⁵

Calls for union participation often focus on the need for stakeholder support and commitment to the solutions, but that conceives of union involvement going in only one direction, still from the top-down.¹¹⁶ Unions bring more to the table, however. They can help craft and implement solutions that will be more effective to reform police culture and change officer behavior.¹¹⁷ Unions have a large role in shaping the culture of a department, and they can help connect officers with the communities they police in.¹¹⁸ The interests of officers as workers and the interests of community members often align, in fact.¹¹⁹ Consider the Mission Statement of the Fraternal Order of Police, which exists in order to:

"[S]upport and defend the Constitution of the United States; to inculcate loyalty and allegiance to the United States of America; to promote and foster the enforcement of law and order; to improve the individual and collective proficiency of our members in the performance of their duties; to encourage fraternal, educational, charitable and social activities among law enforcement officers; to advocate and strive for uniform application of the civil service merit system for appointment and promotion; to support the improvement of

111. Schatmeier, *supra* note 105, at 556–59.

112. Schatmeier, *supra* note 105, at 551 (citing Joshua M. Chanin, *Negotiated Justice: The Legal, Administrative, and Policy Implications of 'Pattern or Practice' Police Misconduct Reform* 310 (Jul. 6, 2011) (unpublished Ph.D. dissertation, American University), <https://www.ncjrs.gov/pdffiles1/nij/grants/237957.pdf>; Letter from Thomas E. Perez, Asst. Att'y Gen., U.S. Dep't of Just., to Joseph Maturo, Jr., Mayor, East Haven, CT, 19–20 (Dec. 19, 2011), http://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf (noting union bulletins calling cooperators 'rats' and threatening union comments during the investigation).

113. See Schatmeier, *supra* note 105, at 541, 581–82.

114. See Semuels, *supra* note 109 (describing one officer's experience leaving the union and then rejoining once both the city and union leadership changed and new leaders seriously embraced reform).

115. Semuels, *supra* note 109.

116. See Schatmeier, *supra* note 105, at 556–57.

117. See Schatmeier, *supra* note 105, at 549.

118. See Marks & Fleming, *supra* note 106, at 186–87.

119. Semuels, *supra* note 109.

the standard of living and working conditions of the law enforcement profession through every legal and ethical means available; to create and maintain tradition of esprit de corps insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly to establish the confidence of the public in the service dedicated to the protection of life and property.”¹²⁰

Several of the items in this statement highlight how the union’s interests could complement reform efforts, especially those focused on improvement of officer performance, the encouragement of engagement with the community in more than one item, and improvement of the standard of living and working conditions for officers.¹²¹ Alignment is not inevitable, but performance can easily encompass things like problem-oriented policing,¹²² and encouraging educational activities and efficiency can also promote training. Cultivating a true spirit of mutual helpfulness and fraternalism with the community served could easily encompass real connections, breaking down us versus them barriers.¹²³ Improvement of the standard of living and working conditions for officers will help to attract and retain well qualified people.¹²⁴

Working conditions for officers are inextricably connected to community interests.¹²⁵ Union concerns about insufficient staffing levels or long work hours for officers protect communities (as well as officers) to ensure not only enough law enforcement to serve their needs, but also officers who are healthy and able to perform well.¹²⁶ Even the supportive role of unions may play a valuable role in keeping police officers healthy and able to perform at high

120. *Mission Statement*, FRATERNAL ORDER OF POLICE, <https://www.fop.net/CmsPage.aspx?id=18> (last visited Mar. 16, 2016).

121. *Id.*

122. See Herman Goldstein, *Improving Policing: A Problem Oriented Approach*, 25 CRIME & DELINQUENCY 236 (1979) (defining problem oriented policing in 1979 as including study and involvement of the community by police to adopt a problem solving approach to crime and crime prevention); see also *About CPOP*, CTR. FOR PROBLEM-ORIENTED POLICING, <http://www.popcenter.org/about/?p=whatiscpop> (last visited Mar. 29, 2016).

123. INT’L ASS’N OF CHIEFS OF POLICE, IACP NATIONAL POLICY SUMMIT ON COMMUNITY-POLICE RELATIONS: ADVANCING A CULTURE OF COHESION AND COMMUNITY TRUST 11 (2015).

124. CHRISTOPHER KOPER, ET AL., *HIRING AND RETENTION ISSUES IN POLICE AGENCIES: READINGS ON THE DETERMINANTS OF POLICE STRENGTH, HIRING AND RETENTION OF OFFICERS, AND FEDERAL COPS PROGRAM* 45 (2001).

125. PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT 61 (2015) (hereinafter FINAL REPORT).

126. Jim Redden, *Police Union: Survey Says Officer Morale, Faith in Leadership Low*, PORTLAND TRIB. (Jan. 12, 2016, 4:38 PM), <http://portlandtribune.com/pt/9-news/288681-165819-police-union-survey-says-officer-morale-faith-in-leadership-low>.

levels.¹²⁷ For example, union and individual officer involvement in training is an opportunity for departments to reduce the kinds of stressors that may lead to more conflict.¹²⁸ Training, and in fact being a training officer, has been found to reduce the likelihood of an officer engaging with individuals coercively.¹²⁹

V. CONCLUSION

The protests that have followed high profile shootings have suggested that the relationship between many police departments and at least the Black community is broken. Non-white people have far less confidence that the police can protect them from violent crime¹³⁰ and most people think that the police do not treat people of all races equally.¹³¹ There are fractures within communities and between particular communities and the police as an entity.¹³² The recognition of this problem prompted President Obama to sign an executive order establishing the Task Force on 21st Century Policing.¹³³ That task force was charged with identifying recommendations for how policing practices can promote safe communities while building public trust.¹³⁴ Interestingly, the recommendations of that report incorporated a number of ways increased involvement of unions would lead to reform, but mentioned unions only rarely.¹³⁵

For example, one of the recommendations was that “[l]aw enforcement agencies should promote legitimacy internally by applying the principles of procedural justice,” and union leadership ought to be involved in policy development.¹³⁶ Another provided that “[l]aw enforcement should be

127. *See Mission Statement*, *supra* note 120.

128. *See Hurrell & Kroes*, *supra* note 93, at 243.

129. Sun, *supra* note 93, at 36–37, 41–45. The same study showed that the amount of force used was the same regardless of whether it was trainers or regular officers using force.

130. Justin McCarthy, *Nonwhites Less Likely to Feel Police Protect and Serve Them*, GALLUP (Nov. 17, 2014), <http://www.gallup.com/poll/179468/nonwhites-less-likely-feel-police-protect-serve.aspx>.

131. *Few Say Police Forces Do Well in Treating Races Equally*, PEW RESEARCH CTR. (Aug. 25, 2014), <http://www.people-press.org/2014/08/25/few-say-police-forces-nationally-do-well-in-treating-races-equally/>; Jens Manuel Krogstad, *Latino Confidence in Local Police Lower than Among Whites*, PEW RESEARCH CTR. (Aug. 28, 2014), <http://www.pewresearch.org/fact-tank/2014/08/28/latino-confidence-in-local-police-lower-than-among-whites/>.

132. *See* FINAL REPORT, *supra* note 125, at 9.

133. Exec. Order No. 13,684, 79 Fed. Reg. 76,865–66 (Dec. 18, 2014).

134. FINAL REPORT, *supra* note 125, at 5.

135. *See generally* FINAL REPORT, *supra* note 125. A number of representatives from the Fraternal Order of Police participated in the listening sessions, submitted testimony, or otherwise supported the work of the task force. FINAL REPORT, *supra* note 125, at 14 n.19, 71–78. However, the word “union” was mentioned only five times. FINAL REPORT, *supra* note 125, at 6, 14, 35, 61, 62.

136. FINAL REPORT, *supra* note 125, at 14.

encouraged to explore more flexible staffing models” as a way to promote work-life balance and encourage retention.¹³⁷ Unions were mentioned in connection with collaboration to develop policies for the uses of new technology.¹³⁸ Finally, two entire “pillars” of the report were focused on areas unions could play a big role in: training and education and officer wellness and safety.¹³⁹

Like President Obama, Governor Jay Nixon established a commission to study the social and economic conditions underlying the unrest in the St. Louis region after the shooting of Michael Brown.¹⁴⁰ The Ferguson Commission held hearings and issued a report in the fall of 2015 making a number of policy recommendations, but also providing a narrative to put those recommendations into context.¹⁴¹ These recommendations, like the Task Force’s report, create room for including the police union as a partner, but there is no mention at all of that union explicitly.¹⁴² The first recommendation section of the report focuses on police reform, emphasizing reform to the use of force policies, changed training for officers, and a change to department cultures.¹⁴³ One area that both the President’s task force and the Ferguson Commission focused on that could be viewed as either public policy or a staffing/assignment matter was the use of officers to issue tickets as a way to raise revenue or for any other reason not directly related to improving public safety.¹⁴⁴

The recommendations on changing police culture, training, and practices were reiterated in a number of “calls to action,” specific policy changes advocated as next steps by the commission.¹⁴⁵ Community oriented policing and ways of building common community were specifically recommended, but no mention was made of the police union.¹⁴⁶ Additional calls to action focused on developing policies about the use of new technology, and although soliciting input from officers was recommended to help law enforcement agencies evaluate the effectiveness of technology, that was the only mention of

137. FINAL REPORT, *supra* note 125, at 18.

138. FINAL REPORT, *supra* note 125, at 35.

139. FINAL REPORT, *supra* note 125, at 51–70. The implementation recommendations also suggested collaborating with unions by charging the Office of Community Oriented Policing Services to “[p]rovide support to . . . national rank and file [police] organizations to encourage them to implement task force recommendations.”

140. 40 MO. REG. 5 (Jan. 2, 2015).

141. *See generally* THE FERGUSON COMM’N, FORWARD THROUGH FERGUSON: A PATH TOWARD RACIAL EQUITY 10–12 (Positive Change, 2015), apps.stlpublicradio.org/ferguson-commission-priorities/assets/report.pdf (hereinafter Ferguson Commission Report).

142. *See generally* Ferguson Commission Report, *supra* note 141.

143. Ferguson Commission Report, *supra* note 141, at 24–29.

144. Ferguson Commission Report, *supra* note 141, at 32–35; FINAL REPORT, *supra* note 126, at 26–27.

145. Ferguson Commission Report, *supra* note 141, at 63–65, 76–77, 80.

146. Ferguson Commission Report, *supra* note 141, at 96–97.

officer input, and the union was not mentioned at all.¹⁴⁷ Specific calls to action recommended instituting peer review of critical incidents and ensuring mental health services and other supports for officer well-being, with no reference to the police union.¹⁴⁸

Particularly because of the fragmented nature of the municipal structure of the St. Louis region and the resulting fragmentation of police functions,¹⁴⁹ enlisting the help of the police union to be a partner in reforming police culture and a demand for training could make those recommendations more successful. It is possible, though, that the outspokenness of police union leaders, especially Jeff Roorda, in the wake of the protests and at some of the commission meetings made any explicit inclusion of the union untenable.¹⁵⁰

Although they may sound critical, these observations about these reports are really not meant as a criticism, but merely to highlight a missed opportunity or room for future opportunities by union leaders and reformers. If the police unions in St. Louis and St. Louis County could become partners in efforts to reform our region's policing and to address the social and economic forces underneath some of the conflict, real and lasting change would be more likely.

147. Ferguson Commission Report, *supra* note 141, at 70.

148. Ferguson Commission Report, *supra* note 141, at 84.

149. Ferguson Commission Report, *supra* note 141, at 33–34.

150. Ferguson Commission Report, *supra* note 141, at 180 (listing the President of the Missouri Fraternal Order of Police as one of the Ferguson Commission members). His inclusion speaks to potential unpublicized collaboration with the police union that led to the Commission's report.

